

114TH CONGRESS  
2D SESSION

# S. 3441

To provide for the vacating of certain convictions and expungement of certain arrests of victims of human trafficking.

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IN THE SENATE OF THE UNITED STATES

SEPTEMBER 28, 2016

Mrs. GILLIBRAND (for herself and Mr. PORTMAN) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To provide for the vacating of certain convictions and expungement of certain arrests of victims of human trafficking.

1       *Be it enacted by the Senate and House of Representa-  
2 tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Trafficking Survivors  
5 Relief Act of 2016”.

6 **SEC. 2. FEDERAL EXPUNGEMENT FOR VICTIMS OF TRAF-  
7 FICKING.**

8       (a) IN GENERAL.—Chapter 237 of title 18, United  
9 States Code, is amended by adding at the end the fol-  
10 lowing:

1   **“§ 3772. Motion to vacate; expungement; mitigating**  
2                   **factors**

3       “(a) DEFINITIONS.—In this section—

4               “(1) the term ‘child’ means an individual who  
5       has not attained 18 years of age;

6               “(2) the term ‘covered offense’—

7               “(A) means a Federal offense that is not—

8                       “(i) a violent crime; or

9                       “(ii) an offense of which a child was  
10       a victim; and

11       “(B) includes—

12               “(i) a conspiracy to commit an offense  
13       described in subparagraph (A)(i) of which  
14       a child was not a victim; and

15               “(ii) a conspiracy to commit an of-  
16       fense described in subparagraph (A)(ii)  
17       that is not a violent crime;

18       “(3) the term ‘covered prisoner’ means an indi-  
19       vidual who—

20               “(A) was convicted of a noncovered offense  
21       before the date of enactment of this section;

22               “(B) was sentenced to a term of imprison-  
23       ment for the noncovered offense; and

24               “(C) is imprisoned under such term of im-  
25       prisonment;

26       “(4) the term ‘eligible entity’ includes—

1                 “(A) a legal aid society or legal services or-  
2                 ganization that provides indigent legal services;  
3                 “(B) a nonprofit organization that provides  
4                 legal services to victims of trafficking; and  
5                 “(C) a public defender’s office;

6                 “(5) the terms ‘employee’ and ‘officer’ have the  
7                 meanings given the terms in section 2105 of title 5;

8                 “(6) the term ‘Federal offense’ means an of-  
9                 fense that is punishable under Federal law or the  
10                 laws of the District of Columbia;

11                 “(7) the term ‘noncovered offense’—

12                 “(A) means a Federal offense that is a vio-  
13                 lent crime;

14                 “(B) does not include a Federal offense  
15                 that is a violent crime of which a child was a  
16                 victim; and

17                 “(C) includes a conspiracy to commit an  
18                 offense described in subparagraph (B);

19                 “(8) the term ‘victim of trafficking’ has the  
20                 meaning given that term in section 103 of the Traf-  
21                 ficking Victims Protection Act of 2000 (22 U.S.C.  
22                 7102); and

23                 “(9) the term ‘violent crime’ has the meaning  
24                 given that term in section 103 of the Juvenile Jus-

1 tice and Delinquency Prevention Act of 1974 (42  
2 U.S.C. 5603).

3 “(b) MOTIONS TO VACATE CONVICTIONS OR EX-  
4 PUNGE ARRESTS.—

5 “(1) IN GENERAL.—

6 “(A) CONVICTIONS OF COVERED OF-  
7 FENSES.—A person convicted of any covered of-  
8 fense (or an eligible entity representing such a  
9 person) may move the court which imposed the  
10 sentence for the covered offense to vacate the  
11 judgment of conviction if the covered offense  
12 was committed as a direct result of the person  
13 having been a victim of trafficking.

14 “(B) ARRESTS FOR COVERED OF-  
15 FENSES.—A person arrested for any covered of-  
16 fense (or an eligible entity representing such a  
17 person) may move the district court for the dis-  
18 trict and division embracing the place where the  
19 person was arrested to expunge all records of  
20 the arrest if the conduct or alleged conduct of  
21 the person which resulted in the arrest was di-  
22 rectly related to the person having been a vic-  
23 tim of trafficking.

24 “(C) ARRESTS FOR NONCOVERED OF-  
25 FENSES.—A person arrested for any noncovered

1                   offense (or an eligible entity representing such  
2                   a person) may move the district court for the  
3                   district and division embracing the place where  
4                   the person was arrested to expunge all records  
5                   of the arrest if—

6                         “(i) the conduct or alleged conduct of  
7                         the person which resulted in the arrest was  
8                         directly related to the person having been  
9                         a victim of trafficking; and

10                         “(ii)(I) the person is acquitted of the  
11                         noncovered offense;

12                         “(II) the government does not pursue  
13                         or dismisses criminal charges against the  
14                         person for the noncovered offense; or

15                         “(III)(aa) the charges against the per-  
16                         son for the noncovered offense are reduced  
17                         to an offense that is a covered offense; and

18                         “(bb) the person is acquitted of the  
19                         covered offense, the government does not  
20                         pursue or dismisses criminal charges  
21                         against the person for the covered offense,  
22                         or any subsequent conviction of the cov-  
23                         ered offense is vacated.

24                         “(2) CONTENTS OF MOTION.—A motion de-  
25                         scribed in paragraph (1) shall—

1                 “(A) be in writing;

2                 “(B) describe any supporting evidence;

3                 “(C) state the offense; and

4                 “(D) include copies of any documents

5                 showing that the movant is entitled to relief

6                 under this section.

7                 “(3) HEARING.—

8                 “(A) MANDATORY HEARING.—

9                 “(i) MOTION IN OPPOSITION.—Not

10                 later than 30 days after the date on which

11                 a motion is filed under paragraph (1), the

12                 Government may file a motion in opposi-

13                 tion of the motion filed under paragraph

14                 (1).

15                 “(ii) MANDATORY HEARING.—If the

16                 Government files a motion described in

17                 clause (i), not later than 15 days after the

18                 date on which the motion is filed, the court

19                 shall hold a hearing on the motion.

20                 “(B) DISCRETIONARY HEARING.—If the

21                 Government does not file a motion described in

22                 subparagraph (A)(i), the court may hold a

23                 hearing on the motion not later than 45 days

24                 after the date on which a motion is filed under

25                 paragraph (1).

## 1       “(4) FACTORS.—

2                 “(A) VACATING CONVICTIONS OF COVERED  
3                 OFFENSES.—The court may grant a motion  
4                 under paragraph (1)(A) if, after notice to the  
5                 Government and an opportunity to be heard,  
6                 the court finds, by clear and convincing evi-  
7                 dence, that—

8                         “(i) the movant was convicted of a  
9                 covered offense; and

10                         “(ii) the participation in the covered  
11                 offense by the movant was a direct result  
12                 of the movant having been a victim of traf-  
13                 ficking.

14                 “(B) EXPUNGING ARRESTS FOR COVERED  
15                 OFFENSES.—The court may grant a motion  
16                 under paragraph (1)(B) if, after notice to the  
17                 Government and an opportunity to be heard,  
18                 the court finds, by clear and convincing evi-  
19                 dence, that—

20                         “(i) the movant was arrested for a  
21                 covered offense; and

22                         “(ii) the conduct or alleged conduct  
23                 which resulted in the arrest was directly  
24                 related to the movant having been a victim  
25                 of trafficking.

1                 “(C) EXPUNGING ARRESTS FOR NON-  
2 COVERED OFFENSES.—The court may grant a  
3 motion under paragraph (1)(C) if, after notice  
4 to the Government and an opportunity to be  
5 heard, the court finds, by clear and convincing  
6 evidence, that—

7                 “(i) the movant was arrested for a  
8 noncovered offense and the conduct or al-  
9 leged conduct which resulted in the arrest  
10 was directly related to the movant having  
11 been a victim of trafficking; and

12                 “(ii)(I) the person is acquitted of the  
13 noncovered offense;

14                 “(II) the government does not pursue  
15 or dismisses criminal charges against the  
16 person for the covered offense; or

17                 “(III)(aa) the charges against the per-  
18 son for the noncovered offense are reduced  
19 to a covered offense; and

20                 “(bb) the person is acquitted of the  
21 covered offense, the government does not  
22 pursue or dismissed criminal charges  
23 against the person for the covered offense,  
24 or any subsequent conviction of that cov-  
25 ered offense is vacated.

1                 “(5) SUPPORTING EVIDENCE.—

2                 “(A) REBUTTABLE PRESUMPTION.—For  
3                 purposes of this section, there shall be a rebut-  
4                 table presumption that the movant is a victim  
5                 of trafficking if the movant includes in the mo-  
6                 tion—

7                         “(i) a copy of an official record, cer-  
8                 tification, or eligibility letter from a Fed-  
9                 eral, State, tribal, or local proceeding, in-  
10                 cluding an approval notice or an enforce-  
11                 ment certification generated from a Fed-  
12                 eral immigration proceeding, that shows  
13                 that the movant was a victim of traf-  
14                 ficking, including a victim of a trafficker  
15                 charged with a violation of chapter 77; or

16                         “(ii) an affidavit or sworn testimony  
17                 from a trained professional staff member  
18                 of a victim services organization, an attor-  
19                 ney, a member of the clergy, or a medical  
20                 or other professional from whom the mov-  
21                 ant has sought assistance in addressing  
22                 the trauma associated with being a victim  
23                 of trafficking.

24                 “(B) OTHER EVIDENCE.—

1                     “(i) IN GENERAL.—For purposes of  
2                     this section, in determining whether the  
3                     movant is a victim of trafficking, the court  
4                     may consider any other evidence the court  
5                     determines is of sufficient credibility and  
6                     probative value, including an affidavit or  
7                     sworn testimony of the movant.

8                     “(ii) AFFIDAVIT OR SWORN TESTI-  
9                     MONY OF MOVANT SUFFICIENT EVI-  
10                  DENCE.—The affidavit or sworn testimony  
11                  of the movant described in clause (i) shall  
12                  be sufficient evidence to vacate a convic-  
13                  tion or expunge an arrest under this sec-  
14                  tion if the court determines that—

15                  “(I) the affidavit or sworn testi-  
16                  mony is credible; and  
17                  “(II) no other evidence is readily  
18                  available.

19                  “(6) CONVICTION OR ARREST OF OTHER PER-  
20                  SONS NOT REQUIRED.—It shall not be necessary  
21                  that any person other than the movant be convicted  
22                  of or arrested for a covered offense before the mov-  
23                  ant may file a motion under paragraph (1).

24                  “(7) DENIAL OF MOTION.—

1                 “(A) IN GENERAL.—If the court denies a  
2                 motion filed under paragraph (1), the denial  
3                 shall be without prejudice.

4                 “(B) REASONS FOR DENIAL.—If the court  
5                 denies a motion filed under paragraph (1), the  
6                 court shall state the reasons for the denial in  
7                 writing.

8                 “(C) REASONABLE TIME TO CURE DEFI-  
9                 CIENCIES IN MOTION.—If the motion was de-  
10                  nied due to a curable deficiency in the motion,  
11                 the court shall allow the movant sufficient time  
12                 for the movant to cure the deficiency.

13                 “(8) APPEAL.—An order granting or denying a  
14                 motion under this section may be appealed in ac-  
15                 cordance with section 1291 of title 28 and section  
16                 3731 of this title.

17                 “(c) VACATUR OF CONVICTIONS.—

18                 “(1) IN GENERAL.—If the court grants a mo-  
19                 tion to vacate a conviction under subsection (b), the  
20                 court shall immediately vacate the conviction for  
21                 cause, set aside the verdict and enter a judgment of  
22                 acquittal, and enter an expungement order that di-  
23                 rects that there be expunged from all official records  
24                 all references to—

1                 “(A) the arrest of the person for the cov-  
2                 ered offense;

3                 “(B) the institution of criminal pro-  
4                 ceedings against the person relating to the cov-  
5                 ered offense; and

6                 “(C) the results of the proceedings.

7                 “(2) EFFECT.—If a conviction is vacated under  
8                 an order entered under paragraph (1)—

9                 “(A) the conviction shall not be regarded  
10                 as a conviction under Federal law and the per-  
11                 son for whom the conviction was vacated shall  
12                 be considered to have the status occupied by the  
13                 person before the arrest or the institution of the  
14                 criminal proceedings related to such conviction;  
15                 and

16                 “(B) no alien may be removed, determined  
17                 to be inadmissible, or lose any immigration ben-  
18                 efit because of such conviction, arrest, or insti-  
19                 tution of criminal proceedings.

20                 “(d) EXPUNGEMENT OF ARRESTS.—

21                 “(1) IN GENERAL.—If the court grants a mo-  
22                 tion to expunge an arrest under subsection (b), the  
23                 court shall immediately enter an expungement order  
24                 that directs that there be expunged from all official  
25                 records all references to—

1                 “(A) the arrest of the person for the cov-  
2                 ered offense;

3                 “(B) the institution of any criminal pro-  
4                 ceedings against the person relating to the cov-  
5                 ered offense; and

6                 “(C) the results of the proceedings, if any.

7                 “(2) EFFECT.—If an arrest is expunged under  
8                 an order entered under paragraph (1)—

9                 “(A) the arrest shall not be regarded as an  
10                 arrest under Federal law and the person for  
11                 whom the arrest is expunged shall be consid-  
12                 ered to have the status occupied by the person  
13                 before the arrest or the institution of the crimi-  
14                 nal proceedings related to such arrest, if any;  
15                 and

16                 “(B) no alien may be removed, determined  
17                 to be inadmissible, or lose any immigration ben-  
18                 efit because of arrest or institution of criminal  
19                 proceedings, if any.

20                 “(e) MITIGATING FACTORS.—

21                 “(1) IN GENERAL.—The court which imposed  
22                 sentence for a noncovered offense upon a covered  
23                 prisoner may reduce the term of imprisonment for  
24                 the noncovered offense—

1               “(A) upon motion by a covered prisoner,  
2               the Director of the Bureau of Prisons, or the  
3               court’s own motion;

4               “(B) after notice to the Government;

5               “(C) after considering—

6                       “(i) the factors set forth in section  
7                       3553(a);

8                       “(ii) the nature and seriousness of the  
9                       danger to any person; and

10                      “(iii) the community, or any crime  
11                       victims; and

12               “(D) if the court finds, by clear and con-  
13               vincing evidence, that the covered prisoner com-  
14               mitted the noncovered offense as a direct result  
15               of the covered prisoner having been a victim of  
16               trafficking.

17               “(2) REBUTTABLE PRESUMPTION.—For the  
18               purposes of this subsection, there shall be a rebutta-  
19               ble presumption that a covered prisoner is a victim  
20               of trafficking if the covered prisoner provides—

21               “(A) a copy of an official record, certifi-  
22               cation, or eligibility letter from a Federal,  
23               State, tribal, or local proceeding, including an  
24               approval notice or an enforcement certification  
25               generated from a Federal immigration pro-

1           ceeding, that shows that the covered prisoner  
2           was a victim of trafficking, including a victim  
3           of a trafficker charged with a violation of chap-  
4           ter 77; or

5           “(B) an affidavit or sworn testimony from  
6           a trained professional staff member of a victim  
7           services organization, an attorney, a member of  
8           the clergy, or a medical or other professional  
9           from whom the covered prisoner has sought as-  
10          sistance in addressing the trauma associated  
11          with being a victim of trafficking.

12          “(3) REQUIREMENT.—Any proceeding under  
13          this subsection shall be subject to section 3771.

14          “(4) PARTICULARIZED INQUIRY.—For any mo-  
15          tion under paragraph (1), the Government shall con-  
16          duct a particularized inquiry of the facts and cir-  
17          cumstances of the original sentencing of the covered  
18          prisoner in order to assess whether a reduction in  
19          sentence would be consistent with this section.

20          “(f) ADDITIONAL ACTIONS BY COURT.—The court  
21          may, upon granting a motion under this section take such  
22          additional action as the court determines is appropriate.

23          “(g) CONFIDENTIALITY OF MOVANT.—

1           “(1) IN GENERAL.—A motion under this sec-  
2       tion and any documents, pleadings, or orders relat-  
3       ing to the motion shall be filed under seal.

4           “(2) INFORMATION NOT AVAILABLE FOR PUB-  
5       LIC INSPECTION.—No officer or employee may make  
6       any report, paper, picture, photograph, court file or  
7       other document, in the custody or possession of the  
8       officer or employee, that identifies the movant avail-  
9       able for public inspection.

10          “(h) APPLICABILITY.—This section shall apply to any  
11       conviction or arrest occurring before, on, or after the date  
12       of enactment of this section.”.

13          (b) TECHNICAL AND CONFORMING AMENDMENT.—  
14       The table of sections of chapter 237 of title 18, United  
15       States Code, is amended by adding at the end the fol-  
16       lowing:

“3772. Motion to vacate; expungement; mitigating factors.”.

